

1 Make this section a part of the Standard Specifications:

2
3 **"SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

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6 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable of
7 performing the work for which they are bidding.

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9 In accordance with HRS Chapter 103D-310, the Department may require
10 any prospective bidder to submit answers to questions contained in the 'Standard
11 Qualification Questionnaire For Prospective Bidders On Public Works Contracts'
12 furnished by the Department, properly executed and notarized, setting forth a
13 complete statement of the experience of such prospective bidder and its
14 organization in performing similar work and a statement of the equipment
15 proposed to be used, together with adequate proof of the availability of such
16 equipment. Whenever it appears to the Department, from answers to the
17 questionnaire or otherwise, that the prospective bidder is not fully qualified and
18 able to perform the intended work, the Department will, after affording the
19 prospective bidder an opportunity to be heard and if still of the opinion that the
20 bidder is not fully qualified to perform the work, refuse to receive or consider any
21 bid offered by the prospective bidder. All information contained in the answers to
22 the questionnaire shall be kept confidential. Questionnaire so submitted shall be
23 returned to the bidders after serving their purpose.

24
25 No person, firm or corporation may bid where (1) the person, firm, or
26 corporation, or (2) a corporation owned substantially by the person, firm, or
27 corporation, or (3) a substantial stockholder or an officer of the corporation, or (4)
28 a partner or substantial investor in the firm is in arrears in payments owed to the
29 State or its political subdivisions or is in default as a surety or failure to do
30 faithfully and diligently previous contracts with the State.

31
32 **102.02 Contents of Proposal Forms.** The Department will furnish
33 prospective bidders with proposal forms posted in HlePRO stating:

- 34
35 (1) The location,
36
37 (2) Description of the proposed work,
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39 (3) The approximate quantities,
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41 (4) Items of work to be done or materials to be furnished,
42
43 (5) A schedule of items, and
44
45 (6) The time in which the work shall be completed.
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Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter the papers bound with or attached to the proposal when the bidder submits its proposal through HlePRO.

Also, the bidder shall consider other documents including the plans and specifications a part of the proposal form whether attached or not.

102.03 (Unassigned).

102.04 Estimated Quantities. The quantities shown in the contract are approximate and are for the comparison of bids only. The actual quantity of work may not correspond with the quantities shown in the contract. The Department will make payment to the Contractor for unit price items in accordance with the contract for only the following:

(1) Actual quantities of work done and accepted, not the estimated quantities; or

(2) Actual quantities of materials furnished, not the estimated quantities.

The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items in accordance with Subsection 104.06 - Methods of Price Adjustment.

102.05 Examination of Contract and Site of Work. The bidder shall examine carefully the site of the proposed work and contract before submitting a proposal.

By the act of submitting a bid for the proposed contract, the bidder warrants that:

(1) The bidder and its Subcontractors have reviewed the contract documents and found them free from ambiguities and sufficient for the purpose intended;

(2) The bidder and its workers, employees and subcontractors have the skills and experience in the type of work required by the contract documents bid upon;

(3) Neither the bidder nor its employees, agents, suppliers or subcontractors have relied upon verbal representations from the Department, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and

(4) The basis for the bid figure are solely on the construction contract documents.

Also, the bidder warrants that the bidder has examined the site of the work. From its investigations, the bidder acknowledges satisfaction on:

(1) The nature and location of the work;

(2) The character, quality, and quantity of materials;

(3) The difficulties to be encountered; and

(4) The kind and amount of equipment and other facilities needed;

Subsurface information or hydrographic survey data furnished are for the bidders' convenience only. The data and information furnished are the product of the Department's interpretation gathered in investigations made at the specific locations. These conditions may not be typical of conditions at other locations within the project area or that such conditions remain unchanged. Also, conditions found at the time of the subsurface explorations may not be the same conditions when work starts. The bidder shall be solely responsible for assumptions, deductions, or conclusions the bidder may derive from the subsurface information or data furnished.

If the Engineer determines that the natural conditions differ from that originally anticipated or contemplated by the Contractor in the items of excavation, the State may treat the difference in natural conditions, as falling within the meaning of Subsection 104.02 – Changes.

102.06 Preparation of Proposal. The submittal of its proposal shall be on forms furnished by the Department. The bidder shall specify in words or figures:

(1) A unit price for each pay item with a quantity given;

(2) The products of the respective unit prices and quantities

(3) The lump sum amount; and

(4) The total amount of the proposal obtained by adding the amounts of the several items.

The words and figures shall be in ink or typed. If a discrepancy occurs between the prices written in words and those written in figures, the prices written in words shall govern.

When an item in the proposal contains an option to be made, the bidder shall choose in accordance with the contract for that particular item. Determination of an option will not permit the Contractor to choose again.

The bidder shall sign the proposal properly in ink. A duly authorized representatives of the bidder or by an agent of the bidder legally qualified and acceptable to the Department shall sign, including one or more partners of the bidder and one or more representatives of each entity comprising a joint venture.

When an agent, other than the officer(s) of a corporation authorized to sign contracts for the corporation or a partner of a partnership, signs the proposals, a 'Power of Attorney' shall be on file with the Department or submitted with the proposal. Otherwise, the Department will reject the proposal as irregular and unauthorized.

The bidder shall submit acceptable evidence of the authority of the partner, member(s) or officer(s) to sign for the partnership, joint venture, or corporation respectively with the proposal. Otherwise, the Department will reject the proposal as irregular and unauthorized.

102.07 Irregular Proposals. The Department may consider proposals irregular and may reject the proposals for the following reasons:

- (1) The proposal is a form not furnished by the Department, altered, or detached;
- (2) The proposal contains unauthorized additions, conditions, or alternates. Also, the proposal contains irregularities that may tend to make the proposal incomplete, indefinite, or ambiguous to its meaning;
- (3) The bidder adds provisions reserving the right to accept or reject an award. Also, the bidder adds provisions into a contract before an award;
- (4) The proposal does not contain a unit price for each pay item listed except authorized optional pay items; and
- (5) Prices for some items are out of proportion to the prices for other items.
- (6) If in the opinion of the Director, the bidder and its listed subcontractors do not have the Contractor's licenses or combination of Contractor's licenses necessary to complete the work.

Where the prospective bidder is bidding on multiple projects simultaneously and the proposal limits the maximum gross amount of awards that the bidder can accept at one bid letting, the proposal is not irregular if the limit on the gross amount of awards is clear, and the Department selects the awards that can be given.

102.08 Proposal Guaranty. The Department will not consider a proposal of \$25,000 or more unless accompanied by:

(1) A deposit of legal tender; or

(2) A valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii, in the form and composed, substantially, with the same language as provided herewith and signed by both parties; or

(3) A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

(a) The bidder may use these instruments only to a maximum of \$100,000.

(b) If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

(c) The instrument shall be made payable at sight to the Department.

(d) Proposal Guaranty listed in (1) and (3) shall be in its original form, and shall be received at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813 before the bid deadline.

In accordance with HRS Chapter 103D-323, the above shall be in a sum not less than 5% of the amount bid.

102.09 Delivery of Proposal. The bidder shall submit the proposal in HlePRO. Bids received after said due date and time shall not be considered. Original bid documents do not have to be submitted. Award will be made based on proposals submitted in HlePRO.

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal or revision of proposal must be completed before the time set for the receiving of bids.

102.11 Public Opening of Proposals. Not applicable.

102.12 Disqualification of Bidders. The Department may disqualify a bidder and reject its proposal for the following reasons:

- (1) Submittal of more than one proposal whether under the same or different name.
- (2) Evidence of collusion among bidders. The Department will not recognize participants in collusion as bidders for any future work of the Department until such participants are reinstated as qualified bidders.
- (3) Lack of proposal guaranty.
- (4) Submittal of an unsigned or improperly signed proposal.
- (5) Submittal of a proposal without a listing of subcontractors or containing only a partial or incomplete listing of subcontractors.
- (6) Submittal of an irregular proposal in accordance with Subsection 102.07 - Irregular Proposals.
- (7) Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to HRS Chapter 84-15.
- (8) Suspended or debarred in accordance with HRS Chapter 104-25.
- (9) Failure to complete the prequalification questionnaire, if applicable.
- (10) Failure to attend the mandatory pre-bid meeting, if applicable.

102.13 Material Guaranty. The successful bidder may be required to furnish a statement of the composition, origin, manufacture of materials, and samples.

102.14 Substitution of Materials and Equipment Before Bid Opening. See Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.

(A) General. When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted via email to the Contact person listed in HlePRO for the solicitation and also post a question in HlePRO under the question/answer tab referencing the email with the request. The request must be posted in HlePRO no later than 14 calendar days before the bid opening date, not including the bid opening date.

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.17 – Addenda.

(B) Statement of Variances. The statement of variances must list all features of the proposed substitution that differ from the contract documents and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, and any other features requested by the Engineer and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, the Contractor shall immediately replace the product with a specified product at no increase in contract price and contract time.

(C) Substitution Denial. Any substitution request not complying with the above requirements will be denied.

102.15 Bid Adjustment.

(A) Preferences for Apprenticeship Programs. In accordance with ACT 17, SLH 2009 – Apprenticeship Program and the Bipartisan Infrastructure Law Section 25019(a), a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's price for evaluation purposes. These procedures apply to public works projects with an estimated cost of \$250,000 or more and entered into under the provisions of HRS Chapter 103.

The following provisions apply to this Apprenticeship Program.

(1) Definitions.

317 (a) "Apprenticeable trade", HRS Section 103-55.6 (c),
318 shall have the same meaning as 'apprenticeable occupation'
319 pursuant to Hawaii Administrative Rules (HAR) Section 30-
320 1-5.

321
322 (b) "Department" means the department of labor and
323 industrial relations.

324
325 (c) "Director" means the director of labor and industrial
326 relations.

327
328 (d) "Employ" means the employment of a person in an
329 employer-employee relations.

330
331 (e) "Governmental body" means as defined in HRS
332 Section 103D-104.

333
334 (f) "Party to an apprenticeship agreement" means party
335 to a registered apprenticeship program with the department
336 of labor and industrial relations.

337
338 (g) "Preference" means the 5% by which the qualified
339 bidder's offer amount would be decreased for evaluation
340 purposes.

341
342 (h) "Public work" shall be as defined in HRS Section 104-
343 2 and HAR Section 12-22-1.

344
345 (i) "Registered apprenticeship program" means a
346 construction trade program approved by the department
347 pursuant to HAR Section 12-30-1 and Section 12-30-4.

348
349 (j) "Sponsor" means an operator of an apprenticeship
350 program and in whose name the program is approved and
351 registered with the department of labor and industrial
352 relations pursuant to HAR Section 12-30-1.

353
354 (k) Offeror – Entity/bidder submitting a proposal to
355 undertake a project.

356
357 (l) Procurement Officer – Director of Transportation or
358 his authorized representative.

359
360 (2) Qualification Procedures.

(a) Any bidder seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.

1. The apprenticeship agreement shall be registered and conform to the requirements of HRS Chapter 372.

2. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.

3. The bidder is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.

(b) The department shall:

1. Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS Chapter 372; and

2. Electronically post the list; including any amendments, on the department website (<http://labor.hawaii.gov>).

(c) Bidder is responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.

(d) Bidder shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.

(e) *Certification Form 1* issued by the department shall include:

1. Contractor information;

2. Solicitation reference;

3. Trade(s);

4. Date and name of apprenticeship program;

408 5. Signature of authorized training coordinator or
409 training trust fund administrator certifying that the
410 contractor is a participant in the program, and that the
411 program is registered with the department;
412

413 6. Contract information for sponsor's authorized
414 representative signing the form;
415

416 7. Number of apprentices enrolled in the program,
417 number who successfully completed the
418 apprenticeship program in the past 12 months,
419 including whether the contractor is signatory to a
420 collective bargaining agreement for that trade, or if
421 not, provide for attachment of a copy of the
422 agreement between the contractor and the program.
423

424 **(3)** Solicitation Procedures.
425

426 **(a)** If the NTB indicates that this project is covered by this
427 preference, and the offer is less than \$250,000 this
428 preference will still be applicable in determining the lowest
429 bidder.
430

431 **(b)** A claim for this preference must include the following:
432

433 1. Allow bidder seeking to claim the preference to
434 state the trades the bidder will employ to perform the
435 work;
436

437 2. For each trade to be employed to perform the
438 work, the bidder shall submit a completed signed
439 original *Certification Form 1* verifying participation in
440 an apprenticeship program registered with the
441 department.
442

443 3. The *Certification Form 1* shall be authorized by
444 an apprenticeship sponsor of the department's list of
445 registered apprenticeship programs. The
446 authorization shall be an original signature by an
447 authorized official of the apprenticeship sponsor; and
448

449 4. The completed *Certification Form 1* for each
450 trade must be submitted by the bidder with the offer.
451 Previous certifications shall not apply unless allowed
452 by the solicitation.
453

454 (c) Upon receiving *Certification Form 1*, the procurement
455 officer will verify with the department that the apprenticeship
456 program is on the list of apprenticeship programs registered
457 with the department. If the programs are not confirmed by
458 the department, the bidder will not qualify for the preference.
459

460 (4) Evaluation and Contract Award.

461
462 (a) If the bidder certifies participation in an apprenticeship
463 program for each trade which will be employed by the bidder
464 for the project, the procurement officer shall apply the
465 preference and decrease the bidder's total bid amount by
466 five per cent (5%) for evaluation purposes.
467

468 (b) Should the bidder qualify for other statutory
469 preferences (for example, Hawaii products), all applicable
470 preferences shall be applied to the bidder's price.
471

472 (c) The contract amount shall be the original offer
473 amount, exclusive of any preference; the preference is only
474 for evaluation purposes.
475

476 (d) Any claims challenging a bidder's representation that
477 the bidder is a participant in an apprenticeship program(s) as
478 claimed, shall be submitted to the procurement officer. The
479 procurement officer will refer the challenge to the department
480 of labor and industrial relations who shall investigate any
481 such claims and shall make a determination.
482

483 (5) Contract Administration.

484
485 (a) For the duration of a contract awarded utilizing the
486 apprenticeship preference, the contractor shall certify each
487 month that work is being conducted on the project, that it
488 continues to be a participant in the relevant apprenticeship
489 program for each trade it employs.
490

491 (b) Monthly certification shall be made on *Monthly*
492 *Certification Form 2* prepared and made available by the
493 department, be a signed original by the respective
494 apprenticeship program sponsors' authorized official, and
495 submitted by the contractor with its monthly payment
496 requests.
497

(c) Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

1. Withholding of the requested payment until the required form(s) are submitted;

2. Temporary or permanent cessation of work on the project , without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or

3. Proceed to debar or suspend pursuant to HRS Section 103D-702.

(d) If events such as “acts of God,” acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.

102.16 Certification for Safety and Health Program for Bids in excess of \$100,000. In accordance with HRS Chapter 396-18, the bidder or offeror, by signing and submitting this proposal, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from the State Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

102.17 Addenda. Addenda issued shall become part of the contract documents. Addenda to the bid documents will be provided to all prospective bidders via HlePRO. Each addendum shall be an addition to the contract documents. The terms and requirements of the bid documents (i.e., drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum.”

END OF SECTION 102